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JEE NYEN CHONG & ORS

v.

CHONG JIT LEONG & ORS

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COURT OF APPEAL, PUTRAJAYA
RAUS SHARIF PCA
RAMLY ALI JCA
ALIZATUL KHAIR OSMAN JCA
[CIVIL APPEAL NO: Q-02-2822-11-2012]

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3 MAY 2013

TORT: *Defamation - Libel - Wholesale reproduction of alleged defamatory articles - Whether offended rules of proper pleading - Whether exact parts of articles which were defamatory should be specifically*

D

identified - Whether defendants embarrassed in not knowing what to plead in response to wholesale reproduction of impugned articles - Whether appellants' counterclaim bad in law for stating impugned articles in their entirety

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The appellants, who were office-bearers of the Siburan Hall Committee, a society registered under the Societies Act 1966, brought the instant appeal against the High Court's decision in striking out their counterclaim for damages for libel against the respondents. The striking out was in response to the respondent's

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application under O. 14A of the Rules of the High Court 1980 ('RHC') to determine certain questions of law. The application included a prayer for the counterclaim to be struck out under O. 18 r. 19 of the RHC. The questions of law that were posed had to do with whether the appellants' counterclaim was badly

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pleaded in law and defective in that it had reproduced *in toto* nine out of 16 articles that were published by various Chinese language newspapers concerning a press conference the respondents had given, without identifying or specifying which of the words, paragraphs, sentences or parts of the articles concerned were

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defamatory of the appellants. The action in which the counterclaim was raised was itself a libel action the respondents had brought against the appellants based on a notice the appellants had taken out in a Chinese language newspaper. The High Court answered the questions posed in the O. 14A application in favour of the

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respondents and held, *inter alia*, that the counterclaim was badly pleaded in law and defective. In the instant appeal, the appellants argued, *inter alia*, that: (i) the articles had to be read as a whole in order to appreciate the sting of the defamation and; (ii) the

facts and matters pleaded in the counterclaim concerned triable issues which could only be determined by way of a full trial and not by way of the summary process adopted in the respondents' application.

Held (allowing the appeal; reinstating the counterclaim)
Per Raus Sharif PCA delivering the judgment of the court:

(1) The appellants did not throw the whole of the articles on the respondents such as to embarrass them. The counterclaim was not too broadly stated as the appellants had in the beginning of the paragraphs of their counterclaim qualified how each article had defamed them. Clearly, the appellants had stated which part of the articles had defamed them. Clear reference had been made to the articles which the appellants believed would implicate the wrong doings of the appellants which had maligned the appellants. (paras 19 & 20)

(2) There was no basis for the respondents to say that the pleading of the articles in their entirety without specifying the particular passage or sentence or part of the articles would render the pleading defective. As the respondents were the persons who caused the publication of the articles by calling for a press conference to invite publication of their statements, they could not pretend to say that they failed to understand what they had uttered or caused to be published that were defamatory of the appellants. (para 21)

(3) The counterclaim was not bad in law for stating the impugned articles in their entirety. If the appellants were limited to highlighting the relevant facts that gave rise to the defamatory statements, that would have distorted the case the appellants were seeking to make. As such, the articles were properly set out in the pleadings. (paras 22 & 25)

(4) Courts must exercise their discretion sparingly in striking down pleadings for stating too much or too little especially in defamation cases. Each case clearly depends on its own facts and circumstances. (para 25)

Bahasa Malaysia *Translation Of Headnotes*

Perayu-perayu, pemegang-pemegang jawatan Siburan Hall Committee, sebuah pertubuhan yang didaftarkan di bawah Akta Pertubuhan 1966, membuat rayuan ini terhadap keputusan Mahkamah Tinggi membatalkan tuntutan balas mereka bagi ganti rugi untuk libel terhadap responden-responden. Pembatalan

A tersebut adalah sebagai tindak balas kepada permohonan pihak responden di bawah A. 14A Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') untuk menentukan beberapa persoalan undang-undang. Permohonan merangkumi tuntutan supaya tuntutan balas dibatalkan di bawah A. 18 k. 19 KMT. Soalan-soalan undang-
B undang yang dikemukakan adalah berkenaan dengan sama ada tuntutan balas perayu-perayu telah diplidkan dengan cara tak betul dan cacat kerana ia telah menyatakan semula secara keseluruhan sembilan daripada 16 artikel-artikel yang telah diterbitkan oleh beberapa surat khabar bahasa Cina mengenai sidang akhbar yang
C telah diberikan oleh responden-responden, tanpa mengenalpasti atau menyatakan yang mana satu perkataan, perenggan, ayat atau bahagian artikel-artikel berkenaan yang telah memfitnahkan perayu. Tindakan di mana tuntutan balas itu dibangkitkan adalah secara sendirinya satu tindakan libel yang telah dibawa oleh responden-
D responden terhadap perayu-perayu berdasarkan notis yang telah dikeluarkan oleh perayu-perayu di dalam surat khabar Cina. Mahkamah Tinggi menjawab soalan-soalan yang telah dikemukakan di bawah permohonan A. 14A secara memihak kepada pihak responden dan memutuskan, antara lain, bahawa tuntutan balas
E gagal diplidkan dengan betul dan adalah cacat. Di dalam rayuan ini, perayu-perayu berhujah antara lain, bahawa: (i) artikel-artikel seharusnya dibaca secara keseluruhan supaya tamparan fitnah itu dapat dirasai dan; (ii) fakta-fakta dan perkara-perkara yang telah diplidkan di dalam tuntutan balas adalah berkenaan isu-isu yang
F boleh dibicarakan yang hanya boleh ditentukan melalui perbicaraan penuh dan bukan melalui proses ringkas yang dipakai di dalam permohonan responden-responden.

Diputuskan (membenarkan rayuan; menghidupkan semula
G **tuntutan balas)**

Oleh Raus Sharif PMR menyampaikan penghakiman mahkamah:

(1) Perayu-perayu tidak mencampakkan keseluruhan artikel itu
H terhadap responden untuk memalukan mereka. Tuntutan balas tidak dinyatakan secara luas memandangkan perayu-perayu telah pada awal perenggan tuntutan balas mereka memperjelaskan bagaimana setiap artikel telah memfitnah mereka. Dengan jelasnya, perayu-perayu telah menyatakan bahagian mana
I artikel-artikel itu telah memfitnah mereka. Rujukan yang jelas telah dibuat kepada artikel-artikel yang perayu-perayu percayai akan mengaitkan perbuatan-perbuatan salah perayu yang telah menghina perayu-perayu.

(2) Tiada asas bagi responden menyatakan bahawa pliding terhadap artikel-artikel tersebut secara keseluruhan tanpa menentukan perenggan atau ayat atau bahagian artikel itu akan membuatkan pliding itu cacat. Memandangkan responden-responden merupakan pihak yang telah menyebabkan penerbitan artikel-artikel dengan memanggil satu sidang akhbar untuk menjemput penerbitan penyataan mereka, mereka tidak boleh berpura-pura mengatakan bahawa mereka telah gagal memahami apa yang disebarkan oleh mereka atau menyebabkan penerbitan yang memfitnah perayu-perayu.

(3) Tuntutan balas tidak salah dari segi undang-undang kerana telah menyatakan artikel-artikel yang dipersoalkan secara keseluruhannya. Jika perayu-perayu dihadkan dari menegaskan fakta-fakta relevan yang membangkit kepada kenyataan-kenyataan fitnah, itu akan memutarbelitkan kes yang dipohon oleh perayu-perayu. Oleh itu, artikel-artikel telah dibentangkan dengan betul di dalam pliding.

(4) Mahkamah harus menggunakan budi bicara mereka secara berhati-hati dalam menolak pliding-pliding yang telah menyatakan terlalu banyak atau terlalu sedikit terutamanya dalam kes-kes fitnah. Setiap kes dengan jelasnya bergantung kepada fakta-fakta dan keadaan-keadaannya sendiri.

Case(s) referred to:

Abdul Rahim Abdul Hamid & Ors v. Perdana Merchant Bankers Bhd & Ors [2000] 2 CLJ 457 CA ***(refd)***

Abdul Samah Omar v. Zainal Montel [2003] 1 LNS 501 HC ***(refd)***

Bandar Builder Sdn Bhd & 2 Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Blue Valley Plantation Bhd v. Periasamy Kuppannan & Ors [2011] 5 CLJ 481 FC ***(refd)***

Dato' V Kanagalingam v. David Samuels & Ors [2006] 3 CLJ 909 HC ***(refd)***

DDSA Pharmaceuticals Ltd v. Times Newspapers Ltd & Anor [1973] 3 All ER 417 ***(refd)***

Indah Water Konsortium Sdn Bhd v. Yong Kon Fatt [2007] 4 CLJ 613 CA ***(refd)***

Keluarga Communication Sdn Bhd v. Normala Samsudin & Anor Appeal [2006] 2 CLJ 46 CA ***(refd)***

Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor [1997] 3 CLJ 305 FC ***(refd)***

Mirzan Mahathir v. Star Papyrus Sdn Bhd [2000] 5 CLJ 507 HC ***(refd)***

Sim Kie Chon v. Superintendant of Pudu Prison & Ors [1985] 2 CLJ 449; [1985] CLJ (Rep) 293 SC ***(refd)***

A **Legislation referred to:**
Rules of the High Court 1980, O. 14A, O. 18 r. 19(1)(a), (b), (c), (d), O. 78 rr. 2, 3

Other source(s) referred to:
Gatley On Libel And Slander, 11th edn, 2010, pp 967 para 28.12

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For the appellant - Henry Ling Kuong Meng; M/s Henry Ling And Co
For the respondent - Alvin Chong; M/s Chong Brothers

[Appeal from High Court, Kuching; Suits No: 22-228-2010, 22-229-2010 & 22-230-2010]

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Reported by Ashok Kumar

JUDGMENT

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Raus Sharif PCA:

Introduction

[1] This is an appeal from the decision of the High Court Judge who struck out the appellants' counterclaim pursuant to the respondents' application under O. 14A and O. 18 r. 19 of the Rules of the High Court 1980 ('RHC'). At the outset we would like to highlight that this appeal emanates from three consolidated defamation suits at the High Court which was filed by three sets of plaintiffs suing the same defendants. Each set of the plaintiffs had filed a summons in chambers under O. 14A of the RHC which also included a prayer to strike out the counterclaim of the defendants under O. 18 r. 19 of the RHC.

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G **[2]** The appellants are the defendants and the respondents are the plaintiffs. For convenience we would refer to them as in the court below.

[3] We heard and allowed the appeal on 14 March 2012 and ordered the counterclaim to be reinstated. We now give the full grounds of our decision.

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Background Facts

[4] The facts that form the core of this appeal are these. The three sets of plaintiffs in these three actions are prominent personalities and political leaders of the Chinese community in a small town called Siburan in the District of Kuching. The

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Defendants on the other hand are office bearers of the Siburan Hall Committee, a society registered under the Societies Act 1966. The plaintiffs' suit against the defendants for libel was precipitated by their anger against the defendants which emanated from the publication of an impugned notification in Sin Chew Daily dated 6 August 2010. It is the plaintiffs' pleaded case that in the issue of Sin Chew Daily of 6 August 2010 at p. 20 under the heading of "Siburan Hall Committee Notification", the defendants had falsely and maliciously published or caused to be published or caused to be printed and published of and concerning the plaintiffs and of and concerning them in a way of their office and in relation to their conduct therein.

[5] For the purposes of this appeal we reproduce herein the notifications in English as translated by the parties to this suit which can be found at pp. 74 and 77 of the record of appeal.

6-8-2010

SIN CHEW DAILY

Siburan Hall Committee
NOTIFICATION

(1) The well-known state Chinese educational and political leaders Lui Thian Leong and Chan Hon Hiung on 23.07.2010 in local presses International Times, Sin Chew Daily, United Daily News and See Hua Daily News as well as Chong Jit Leong on 25.7.2010 in International Times published misleading statements and claimed to take legal action against the Committee within 7 days. It has caused misunderstanding among the local folks towards this Committee and instituted dissatisfaction and hatred thereby seriously damaged the reputation of this Committee. If it leads to any serious consequences, Liu Thian Leong etc should be held fully responsible.

(2) ...

(3) ...

(4) ...

(5) ...

A (6) ...

Sealed and Signed Siburan Hall Committee
05.08.2010

[6] The above mentioned notification was further repeated in the B See Hua Daily News on 7 August 2010.

[7] The plaintiffs claimed that the above mentioned words are defamatory in nature. As a result thereof the plaintiffs filed the aforesaid actions for damages arising from the libelous statements C so published. In their statement of defence, the defendants have added a counterclaim in which they also claimed damages for alleged libelous statement made by the plaintiffs in a press conference held on 22 July 2010 which was published in three local Chinese Dailies ie, the International Times, Sin Chew Daily D and United Daily News on 23 July 2010. Lengthy excerpts from the three newspapers were reproduced in the pleadings; to be exact nine articles (out of 16) (see paras. 19B, 20B, 21B, 22B, 23B, 24B, 25B, 26B, and 27B of the counterclaim exhibited at pp. 120-144 of the record of appeal. Wherever necessary we will E make mention of it in the latter part of this judgment.

[8] After close of pleadings the plaintiffs filed a summons in chambers under O. 14A of the RHC for the following questions of law to be determined:

F (1) In an action for libel founded on words appearing in newspaper article or articles where some part(s) of the article or articles are not defamatory, whether it is appropriate and proper to plead the whole article or articles without specifying the exact words or the particular paragraphs(s) or sentence(s) G or part(s) in the article(s) complained of; and

(2) Whether the Defendants' pleadings based on entire and long article or articles are bad in law and defective without identifying exactly and specifically the alleged defamatory H words, paragraph(s) or passage(s) or sentence(s) in the said article(s).

The application had also included a prayer to strike out the counterclaim of the defendants under O. 18 r. 19(1)(a) - (c) or I (d) of the RHC.

The High Court

[9] The learned High Court Judge after hearing submissions of the parties answered question number one in the above paragraph in the negative and question number two in the positive. As a result the learned judge struck out the defendants' counterclaim. In so doing the learned judge held *inter alia* that:

(a) In an action for libel founded on words appearing in newspaper article or articles where some parts of the article or articles are not defamatory, it is not appropriate to plead the whole article or articles without specifying or identifying the exact words or the particular paragraph(s) or sentences or parts in the articles complained of. The defendants' pleadings based on entire and long article or articles are bad in law and defective without identifying exactly and specifically the alleged defamatory words, paragraphs or passages or sentences in the said articles.

(b) The defendants failed to particularise the facts pleaded in their counterclaim as per the requirement under O. 78 r. 2 of the RHC.

(c) There is a failure and an onus to plead extrinsic facts giving rise to the innuendo in this case ie, to specify in the statement of claim the particular persons or persons to whom the words were published and the special circumstance known to the persons.

Submissions

[10] The thrust of the defendants' arguments were essentially that:

(a) The defendants' pleadings based on entire and long articles without identifying exactly and specifically the alleged defamatory words in the articles is not defective and bad in law. Those passages or parts of the impugned articles must be read as a whole. Those words as pleaded are the words complained of as the sting of the matter derived from the article or such passage to be read as a whole and not in isolation. Learned counsel referred to the cases of *Mirzan Mahathir v. Star Papyrus Sdn Bhd* [2000] 5 CLJ 507 and *Keluarga Communication Sdn Bhd v. Normala Samsudin & Another Appeal* [2006] 2 CLJ 46 in support of his proposition.

(b) The issues framed by the plaintiffs are neither suitable nor possible to be determined under O. 14A and/or O. 18 r. 19(1) of the RHC as the facts and matters pleaded in the counterclaim as well as the issues or matters stated in the applications are clearly triable which can only be determined by way of *viva voce* evidence of witnesses at the trial. There is no evidence to support any contention that the counterclaim is scandalous, frivolous, vexatious, embarrassing or delay a fair trial. The cases of *Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor* [1997] 3 CLJ 305; *Indah Water Konsortium Sdn Bhd v. Yong Kon Fatt* [2007] 4 CLJ 613; *Abdul Rahim Abdul Hamid & Ors v. Perdana Merchant Bankers Bhd & Ors* [2000] 2 CLJ 457; *Sim Kie Chon v. Superintendent of Pudu Prison & Ors* [1985] CLJ (Rep) 293; *Bandar Builder Sdn Bhd & 2 Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7; *Blue Valley Plantation Bhd v. Periasamy Kuppannan & Ors* [2011] 5 CLJ 481 were referred to in support of his proposition.

(c) The learned High Court Judge erred and was confused with the terminology "innuendo" in that she wrongly observed or assumed that the defendants had relied on the legal innuendo or true innuendo which must state the particulars of the extrinsic facts giving rise to such innuendo pursuant to O. 78 r. 3 of the RHC. The defendants have identified and pleaded the relevant passages as the words complained of by way of their natural and ordinary meaning, including "by way of innuendo or inferential meaning of the said words pleaded meant and were understood to mean or are capable of bearing all or anyone or more of the meanings. The defendants rely on "false Innuendo".

[11] Refuting the argument as put forth by the defendants, learned counsel for the plaintiffs conversely submitted that:

(a) The pleadings are defective as the defendants threw at the plaintiffs and at the court a number of long articles without particularising the specific passage or sentence said to be defamatory of the defendants. The defendants' counterclaim in the three separate actions for libel against the plaintiffs are based on nine newspaper articles and the defendants had set out in their counterclaim the whole of nine newspaper articles in their entirety without particularising the specific passage or sentence of the articles said to be defamatory of them. In

support of his proposition learned counsel referred to the cases of *DDSA Pharmaceuticals Ltd v. Times Newspapers Ltd & Anor* [1973] 3 All ER 417; *Dato' V Kanagalingam v. David Samuels & Ors* [2006] 3 CLJ 909; [2006] 6 MLJ 527; *Abdul Samah Omar v. Zainal Montel* [2003] 1 LNS 501; [2004] 5 MLJ 377.

Findings

[12] We are of the view that the pertinent point for consideration in this appeal is whether the omnibus reproduction of the impugned articles which the defendants believe to be defamatory runs countenance to the rules of proper pleading in defamation cases (libel). Both counsel had rigorously taken us through a plethora of authorities on principles relating to precise pleadings in defamation cases. We do not wish to traverse through all, save for the important cases.

[13] Foremost, the plaintiffs placed great reliance on the case of *DDSA Pharmaceuticals Ltd v. Times Newspapers Ltd & Anor* [1973] 3 All ER 417 (*DDSA Pharmaceuticals*). The learned trial judge herself acknowledged that in defamation cases it is a cardinal rule of precise pleadings as postulated in *DDSA Pharmaceutical* that the claimant must identify the particular paragraph or sentence in the published article which is said to be defamatory to him.

[14] For the purpose of clarity we would discuss the case of DDSA Pharmaceuticals. The facts of the case are this:

> On October 23 1970, the Plaintiffs DDSA Pharmaceuticals Ltd, manufacturers and suppliers of generic drugs, of Old Brompton Road, London SW5, issued a writ against Times Newspapers Ltd, the proprietors and publishers of the "The Sunday Times Magazine" and Kevin John Peter Ender-Durisch, a journalist who wrote articles for the magazine under the name "Peter Durisch". The writ claimed damages for libel contained in an article entitled" The Great Drug Fraud" published on the front page and pages 20, 21, 23 and 25 of the issue of the magazine dated October 25, 1970. "The Sunday Times" colour supplement for October 25 1970 included a front page picture and an article extending over 10 pages copiously illustrated" The Great Drug Fraud'. It stated, *inter alia* that an unidentified retail chemist were defrauding the National Health Service by substituting for expensive brand-name drugs prescribed by doctors cheap imitation drugs supplied to them at a much lower cost and that the chemist then claimed reimbursement from the National Health Service for the higher cost of the brand-name drugs prescribed.

A The plaintiff company, DDSA Pharmaceuticals manufacturers and suppliers of generic drugs, whose name was mentioned in the text and attached to some of the illustrations, issued a writ followed by a statement of claim against the proprietors and publishers of the magazine and the writer of the article claiming damages for
B defamation; it pleaded that the front page picture and four numbered pages of the article were defamatory of the company; and the front page and three sheets of the supplement were delivered as a separate documents attached to the statement of claim. No particular passages or illustrations were specifically pleaded as defamatory and no alleged natural or ordinary meanings
C were set out.

The Defendants applied the court for an order that the statement of claim be struck out on the ground that it disclosed no reasonable cause of action and might embarrass or delay the fair trial of the action. The court allowed the striking out which was
D latter upheld by the Court of Appeal.

Lord Denning in delivering the judgment of the court had this to say:

E The statement of claim has been delivered. It is very short:

1. The plaintiffs are and were at all material times manufacturers and suppliers of genetic drugs and carry on business at 310 Old Brompton Road, London, SW5.

F 2. The first-named defendants are the proprietors and publishers of "The Sunday Times Magazine", a newspaper having a wide circulation throughout the country; and the second defendant is a journalist who, *inter alia*, writes articles for the said magazine under the name "Peter Durish".

G 3. On pages 20, 21, 23 and 25 and on the front cover of the issue of the said magazine dated October 25, 1970, the Defendants and each of them falsely and maliciously printed and published or caused to be printed and published of the plaintiffs and of them in the way of their trade and in relation to their conduct thereto an article written by the
H defendant and illustrated by photographs entitled "The Great Drug Frauds". The words and photographs complained of are contained in the copy article and photographs delivered separately herewith".

I 4. The Plaintiffs have in consequence been seriously injured in their reputation and in the way of their trade or business and have suffered loss and damage. Particulars of special damage will be delivered prior to the issue of the summons for directions.

That is the whole of the statement of claim. It is defective-and I say it deliberately-it is defective altogether for two reasons. A

In the first place, there ought to have been an innuendo pleaded. This article is capable of many different meanings- so many that it was necessary for the fair conduct of the trial that there should be pleaded a "popular" or "false" innuendo, or whatever you like to call it. In that innuendo the plaintiffs should set out the meaning or meaning or meanings which they say the words bear. That is necessary, not only for the fair conduct of the trial, but also to enable the defendants to know how what to plead, whether to plead justification or fair comment or to apologize. I need not go through all the cases. They are *Allsop v. Church of England Newspaper Ltd* [1972] 2 QB 161; *S & K Holdings v. Throgmorton Publications Ltd* [Ltd] 1 WLR 1036; and also *Associated Leisure Ltd v. Associated News paper Ltd,* March 23, 1972, Bar Library Transcript No 95. Those cases establish that in most cases, if not all, it is necessary for the Plaintiff, even when they say is the natural and ordinary, meaning of the words. This is just such a case. B C D

In the second place, the pleading is defective because it throws- and I use that word deliberately-on the defendants a long article without picking out the parts said to be defamatory. Some of the article is not defamatory of anyone at all. It describes only the method of importing drugs. Other parts of the article are defamatory of some unnamed chemists, but not of the plaintiffs at all. Yet other parts may be defamatory of the plaintiffs. To throw an article of that kind at the defendants and indeed at the court, without picking out the particular passages, is highly embarrassing. Master Bickford Smith put it very sensibly: E F

> It is tremendously embarrassing to claim eke out of the whole of the article as a libel. There is a tremendous amount of the article which is defamatory of your clients. You must pick out the particular bits and rely on the rest as extrinsic or surrounding facts giving a defamatory meaning to the words" G

That ruling is in accord with the practice as it has been for many years. The plaintiff must specify the particular parts defamatory of them. For instance, in this particular case there is a reference to a "London - based operation". If the plaintiffs says that it means the plaintiff, they should say so. They should insert (meaning thereby the plaintiffs). There is a reference to "the largest single network operating from a London suburb". Do they say that means the plaintiff? If they do, they should put in (meaning thereby the plaintiffs). Such an exercise will be a great advantage to the plaintiffs themselves. It will make them clear their minds: and it will help the defendants too. H I

[15] We have no hesitation in declaring that the passage above-quoted accurately represents the principles on precise pleading. We have no qualms in agreeing with the learned trial judge that the view expressed by her is indeed an important rule in drafting a proper pleading especially in defamation cases where the defendants (or as in this case the plaintiffs) need to know what he is defending against. A breach of this rule will bring great embarrassment and will delay a fair trial. But the question is however whether the learned trial judge was correct in applying it to the case before her.

[16] One must not lose sight of what was the scenario of *DDSA Pharmaceutical* and why the court decided as it did. In *DDSA Pharmaceutical* the impugned article reproduced in the writ of summons was so general in its drafting and incorporation that it was too embarrassing to the defendant in a way they were unable to defend the action. One can clearly identify this from the following excerpt of Lord Denning's judgment which states:

> ... the pleading is defective because it throws - and I use that word deliberately-on the defendants a long article without picking out the parts said to be defamatory. Some of the article is not defamatory of anyone at all. It describes only the method of importing drugs. Other parts of the article are defamatory of some unnamed chemists, but not of the plaintiffs at all. Yet other parts may be defamatory of the plaintiffs. To throw an article of that kind at the defendants and indeed at the court, without picking out the particular passages, is highly embarrassing. Master Bickford Smith put it very sensibly:
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[17] The vaguely drafted statement of claim was subject to criticism by the English Courts for the simple reason that the defendant (as in *DDSA*'s case) should be put to notice to enable them to know what to plead in defence, whether to plead justification, fair comment or to apologise. It is for this reason that the Court of Appeal in *DDSA* decided that the statement of claim had brought embarrassment to the defendant.

[18] The issue before us was whether the counterclaim as drafted by the defendants had brought embarrassment to the plaintiffs. In order to see whether the defendants did actually throw the whole article or articles on the plaintiffs, which, according to the plaintiffs, had caused so much embarrassment to them, we hereby reproduce the excerpt of the impugned articles as incorporated in the defendants' counterclaim.

> *19C. The defamatory contents of the article aforesaid INTERNATIONAL TIMES pleaded in Paragraph 19B above in Chinese as published and/or caused to be published at the press conference on 22.7.2010 by the Plaintiff jointly with and/or in the presence of and/or with consent of CHONG JIT LEONG and/or CHANG HON HIUNG was understood to refer to, impute, impugn and/or disparage the Defendants as office bearers in charge of management or the affairs of the Siburan Hall*, with a true and literal translation of the article in English read as follows:
>
> SIBURAN HALL MANAGEMENT URGED TO EXPLAIN WHY LOCAL RESIDENTS APPLICATIONS TO JOIN AS MEMBER WERE REJECTED
>
> (Kuching 22/7) During a press conference held on 22 July 2010, the 50 membership applicants who were turned down bombarded the management of Siburan Hall for being ignorant of the local residents' rights and lack of transparency.
>
> The applications were submitted more than two years ago and now the outraged applicants who saw their applications rejected repeatedly were confused and failed to understand the mentality of management. To make them even more confused was that they were even told to collect their refund entrance fee.
>
> The applicants from Siburan Village stated that the management should give them a proper explanation within one week and unconditionally accept them to be members otherwise they will bring the matter to court.

One of the spokesmen for the group, Liu Thian Leong indicated that he was compelled to hold this press conference as there is an urgent need to let Siburan Community know the present condition of Siburan community hall and how it is run. He also strongly demanded that the committee should explain why the 50 membership applications were rejected.

17th Mile Siburan Village Community Hall was constructed in the 70s using government grants, and during that time, a committee was set up to manage its daily administration with its founding membership of 20 plus. Since then there was no new member recruitment. According to Liu Thian Leong and a few others, it has only about ten plus member left.

Previously known as 17th Mile Community Hall, now it is renamed as Siburan Hall.

Liu Thian Leong also pointed out that the rejection of new membership applications had caused outrage among the villagers. As the community hall membership should be opened to all but why the management rejects the applications for membership?"

20C. *The defamatory contents of the article aforesaid INTERNATIONAL TIMES pleaded in Paragraph 20B above in Chinese as published and/or caused to be published at the press conference on 22.7.2010 by the Plaintiff jointly with and/or in the presence of and/or with the consent of CHONG JIT LEONG and/or CHANG HON HIUNG was understood to refer to, impute, impugn and/or disparage the Defendants as office bearers in charge of the management of the Siburan Hall*, with a true and literal translation of the article in English read as follows:

> REFUSAL TO OPEN BASKETBALL COURT RESULTED IN A TRAGEDY SIBURAN VILLAGERS URGED TO REMEMBER THE DEADLY LESSON LEARNT
>
> (Kuching 22/7) Refusing to open the basketball court for public use has indirectly caused a deadly car accident and the **Siburan Hall Committee and Management** should learn from the bitter lesson learnt.

A press conference held on 22 July 2010 by some **Siburan residents blasted the Siburan Community Hall Management for their ill management and improper way of running the hall**, also reiterated the sad incident that claimed a student's life which affect the whole environment of the press conference.

It all started in 2008 when the committee refused to let some youths to play basket ball at the hall that caused them to go all the way to nearby Beratok village to play basket ball.

On their way home, one of the students was involved in a deadly road accident and a young life was sacrificed.

The incident has thus caught the attention of the local residents and as many as 200 residents submitted their applications to join the membership of the then 17th Mile Community Hall' so that they can play their role in supervising the running of the hall.

21C. *The defamatory contents of the article aforesaid SIN CHEW DAILY pleaded in Paragraph 21B above in Chinese as published and/or caused to be published at the press conference on 22.7.2010 by the Plaintiff jointly with and/or in the presence of and/or with the consent of CHONG JIT LEONG and/or CHANG HON HIUNG was understood to refer to, impute, impugn and/or disparage the Defendants as office bearers in charge of the management of the Siburan Hall*, with a true and literal translation of the article in English read as follows:

REFUSAL OF SIBURAN HALL COMMITTEE TO ENDORSE 50 MEMBERSHIP APPLICATIONS CAUSED OUTRAGE

(Kuching 22/7) A group of 17th Mile Siburan villagers who were unhappy with the management of Siburan Hall because of their membership applications despite that they had paid entrance fees and duly completed their forms and yet being turned down by the management.

The group of 20 plus residents led by its community leader Liu Thian Leong held a press conference on 22 July 2010 and bombarded the Siburan Hall committee for lack of transparency in their way of managing the hall and rejecting membership applications of the group.

... ...

Refused to open the facility to public caused human life

The Siburan Hall dispute started in 2008 when a road accident occurred.

During that time, the Siburan Community Hall committee refused to open the facility to public and caused some youths to go all the way to nearby Beratok village to play basketball. On their way home, one of the students was knocked down by a car and killed while crossing the road after alighting from a bus.

22C. *The defamatory contents of the article aforesaid SIN CHEW DAILY pleaded in Paragraph 22B above in Chinese as published and/or caused to be published at the press conference on 22.7.2010 by the Plaintiff jointly with and/or in the presence of and/or with the consent of CHONG JIT LEONG and/or CHANG HON HIUNG was understood*

to refer to, impute, impugn and/or disparage the Defendants as office bearers in charge of the management of the Siburan Hall, with a true and literal translation of the article in English read as follows:

> LACK OF TRANSPARENCY AND COVERTLY ALTERING NAME FROM COMMUNITY HALL TO SIBURAN HALL
>
> (23 July 2010) *A group of Siburan residents condemned the management of Siburan Community Hall for their unreasonableness and lack of transparency in the way of managing the hall.*
>
> Liu Thian Leong, during the press conference, told the press that after several attempts to dissolve the dispute over the rejection of membership application, he was compelled to call for a press conference so that the public would know the details and the truth of the dispute.
>
> Application forms were duly signed and approved.
>
> Liu Thian Leong said two years ago there were 50 local residents who submitted their application forms together with their entrance fee amounting to RM5000. The handover of forms was witnessed by YB Jerip Susil.
>
> He added that the application forms were duly signed and approved by both Boon Jin Lim and Jee Nyen Chong.
>
> However, until now these fifty applicants who had paid their entrance fee and their applications through normal channel had not been approved as members.
>
> *Liu Thian Leong said that now the Siburan Hall Committee had used different excuses to ask the applicants to collect their refund of RM50 each and turned down their membership applications.*
>
> He said 17th Mile Siburan Village Community Hall was constructed in the 70s using government grants, and during that time, its founding members was 20 plus. Since then there was no new membership recruitment.
>
> Renamed as Siburan Hall
>
> **Liu Thian Leong also pointed out that the management was run by a handful few and this has caused outrage among villagers as it was not run in a transparent manner**.
>
> The simple reason why the applicants wanted to join as members was that they would like to supervise the management and the hall would be open for public use.

He also pointed out that the Siburan Village Community Hall was collecting income but all these while the local residents were not informed of how the funds have been managed. To make matters worse, its name was recently altered to Siburan Hall.

Chang Hon Hiung also pointed out that he disagreed on the statement that the 50 membership applications were not according to proper procedure as claimed as the forms were duly signed by both the Chairman and Secretary General.

He said although the application forms that they first submitted had been deemed as not the proper forms, the subsequent ones were forms provided by the committee and thus deemed to be proper.

Recruitment of new members was advertised but membership applications were rejected.

Liu Thian Leong pointed out that shortly after the 2008 road accident, the management had advertised in newspapers for membership recruitment drive but now the membership applications were rejected.

Another representative of the group, Liew Kuet Min also told the press that he received a notice by the management on 30th January 2010 asking him to collect the RM5000 refund on behalf of the 50 applicants. But he refused to do so as he was not authorized by the applicants to do so and he insisted that the membership applications had been proper.

He also revealed after he refused to collect the refund, the management promised to contact him again but until now, he has not heard from the committee since then.

23C. *The defamatory contents of the article aforesaid UNITED DAILY NEWS pleaded in Paragraph 23B above in Chinese as published and/or caused to be published at the press conference on 22.7.2010 by the Plaintiff jointly with and/or in the presence of and/or with the consent of CHONG JIT LEONG and/or CHANG HON HIUNG was understood to refer to, impute, impugn and/or disparage the Defendants as office bearers in charge of the management of Siburan Hall*, with a true and literal translation of the article in English read as follows:

LIU THIAN LEONG URGED THE MANAGEMENT TO EXPLAIN WHY MEMBERSHIP APPLICATIONS WERE REJECTED

(Kuching 22/7) Liu Thian Leong, who is also the Chairman of the Kuching Samarahan Chinese Primary School Boards of Management Associated Federation, told the press that he was compelled to hold this press conference as there is an urgent need to let Siburan community know the present condition of Siburan Community Hall and how it is run. He also reiterated his demand that the committee should explain why the 50 membership applications were rejected.

He opined that the hall was constructed in the 70s using government grants, and as the founding membership was 20 plus and never grow since then, the residents of Siburan has every right to know.

'According to some villagers, the membership of the Siburan Community Hall now stands at 10 plus only and the name has been altered from Siburan Village Community Hall to Siburan Hall.

Liu Thian Leong also pointed out that the rejection of new membership applications had caused outrage among the villagers as the community hall membership should be opened to all.

24C. *The defamatory contents of the article aforesaid UNITED DAILY NEWS pleaded in Paragraph 24B above in Chinese as published and/or caused to be published at the press conference on 22.7.2010 by the Plaintiff jointly with and/or in the presence of and/or with the consent of CHONG JIT LEONG and/or CHANG HON HIUNG was understood to refer to, impute, impugn and/or disparage the Defendants as office bearers in charge of the management of Siburan Hall*, with a true and literal translation of the article in English read as follows:

REFUSAL TO OPEN BASKETBALL COURT RESULTED IN A DEADLY ROAD ACCIDENT. SIBURAN VILLAGERS URGED TO REMEMBER THE LESSON LEARNT

(Kuching 22/7) *Refusing to open the basketball court for public use has indirectly caused a deadly car accident and the Siburan Hall Committee and Management should learn from the bitter lesson learnt.*

A press conference held on 22 July 2010 by some Siburan residents blasted the Siburan Community Hall Management for their ill management and improper way of running the hall, also reiterated the sad incident that claimed a student's life which affect the whole environment of the press conference.

It all started in 2008 when the committee refused to let some youths to play basket ball at the hall that caused them to go all the way to nearby Beratok village to play basket ball. On their way home, one of the students was knocked down by a car when

attempting to cross the road. The death of the student caused outrage among the villagers. As a result, as many 200 residents submitted their applications to join the membership of an organization called '17th Mile Community Hall' at their own initiative, so that they can help supervise the running of the hall.

The strong outrage and demand for opening for public use of the hall by the local community had got the attention of YB Jerip Susil and eventually he intervened and mediated. As a result, the management was agreed to have a dialog session with the local residents and the dialog was held on 30 April 2008.

The outcome of the dialog was that the management agreed to recruit more new members. As soon as the decision was made known, as many as fifty residents submitted their membership application forms and each paid an entrance fee of RM100 respectively to their representative Liew Kuet Min so he can pass the total amount of RM5,000 to the management.

The Applications were submitted two years ago.

One of the applicants, Chang Hon Hiung also inform the press that the membership application forms handover ceremony was even held on 9 May 2008 and it was witnessed by YB Jerip Susil and among those present were Liu Thian Leong and the then chairman Penghulu Boon Jin Lim.

During the same handover ceremony, the group requested the management to issue a proper receipt after they submitted the forms together with the RM5,000 entrance fee. However, the request was rejected as the management told them that the receipt can only be issued after the committee has their proper meeting.

25C. *The defamatory contents of the article aforesaid UNITED DAILY NEWS pleaded in Paragraph 24B above in Chinese as published and/or caused to be published at the press conference on 22.7.2010 by the Plaintiff jointly with and/or in the presence of and/or with the consent of CHONG JIT LEONG and/or CHANG HON HIUNG was understood to refer to, impute, impugn and/or disparage the Defendants as office bearers in charge of the management of Siburan Hall*, with a true and literal translation of the article in English read as follows:

TO BRING THE DISPUTE TO COURT IF THE MANAGEMENT FAILED TO EXPLAIN WITHIN A WEEK

(Kuching 22/7) Led by SUPP Bengoh branch Secretary, Liu Thian Leong, the 50 membership applicants who were rejected held a press conference on 22 July 2010 and bombarded the Siburan Hall Management for their lack of transparent way of running the hall and being unreasonably refused membership applications.

The applications were submitted more than two years ago and now the outrageous applicants who saw their applications rejected repeatedly were confused and failed to understand the mentality of the management. To make even more confused was that they were even told to collect their refund of entrance fee.

All the 50 applicants from Siburan Village stated that the management should give them a proper explanation within one week and unconditionally accept them to be members otherwise they will bring the matter to court.

26C. The defamatory contents of the article aforesaid **SEE HUA DAILY** News pleaded in Paragraph 26B above in Chinese as published and/or caused to be published at the press conference on 22.7.2010 by the Plaintiff jointly with and/or in the presence of and/or with the consent of CHONG JIT LEONG and/or CHANG HON HIUNG was understood to refer to, impute, impugn and/or disparage the Defendants as office bearers in charge of the management of the Siburan Hall, with a true and literal translation of the article in English read as follows:

50. APPLICANTS WANT TO KNOW REASON WHY APPLICATIONS FOR SIBURAN COMMUNITY HALL MEMBERSHIP WERE REJECTED AFTER TWO YEARS

(Kuching 22/7) Membership application was turned down based on procedural and technical problems after dragging for two years and is there any reason for turning people down? The 50 applicants hoped the Siburan Community Hall Committee could explain to them as soon as possible why their applications were turned down. They also hoped that the authority concerned can give them an answer of feedbacks on their earlier complaints and reports lodged to the police department and Registrar of Societies.

One of the 50 applicants, Liu Thian Leong told the press during a press conference that he has been entrusted to be the spokesman for the applicants on the issue of membership application.

Before the press conference, he also disclosed that they were compelled to call such a press conference.

'We hoped that we can reveal the truth on application for Siburan Community Hall membership so the residents and local community may understand the issue and how the hall has been managed and operated'.

He further disclosed that the community hall was set up during 1970s and the hall was built using grants from government.

He pointed out that a committee was set up at the beginning and recruited about 20 members but since then, the committee has not recruited any new member.

Over the years, there were members who passed away or moved out from the area and therefore, at the present there are not many members left.

He also revealed that in recent years, Siburan community hall has been run by some exclusive group that manages the hall in a black box and not transparent.

To make matter worse, lately the name was even altered from Siburan Village Hall Committee to Siburan Hall Committee (Jawatankuasa Dewan Siburan), he claimed.

'All other community halls are called Dewan Masyarakat (community hall) so it is open for public whilst this Siburan Hall is called differently and its membership is exclusive and recruiting no new members.'

He pointed out that such situation over the years has caused many residents unhappiness with the management and yet the management is ignorant but continue their own way of doing things. The management also continues its policy for rejecting new members from joining.

He further pointed out that an accident that happened in 2008 has further exacerbated the situation and more people get angry.

'According to report, the management has forbidden a group of students from practicing basketball and the students had no choice but when to a nearby village called Beratok to practice. Unfortunately, on their way home, a student was killed in a road accident.'

The incident has caused anger among many residents and villagers and about 200 of them even submitted a petition so they can become members of the community hall.

'We want to become members because we want to supervise the management and the facility can be open for public so the residents at large may also enjoy the facility.

No result for 50 membership applications.

He said as early as two years ago, a group of local residents, witnessed by YB Jerip Susil, DUN member for Bengoh, together with the then Chairman of the Community Hall Committee, Boon Jin Lim and Secretary General Jee Nyen Chong, submitted their membership applications and even paid their once and for all membership subscription of RM100.

'We paid RM5000 membership fees in total during that time'

He revealed that he is also one of them who submitted the membership application during that time and until now, his application has not been approved.

The management used different kind of excuses to deal with us and only recently, we were told that our applications were not according to the proper procedure and asked us to collect the refund of our membership fees that we paid.

He claimed that too many of the applicants, this is not reasonable, not transparent and there must be some unknown reasons that their membership applications were rejected.

Meanwhile, he explained that the constitutions on Siburan Community Hall membership stated that it is opened for all residents of Siburan village and those residing in the nearby areas.

'According to the Rules, any resident, regardless of religion, race, gender and political background can be member'

He also pointed out that however the Rules stipulated that the membership application must be with proposer and a seconder to be valid. And when they submitted their applications, they had both the chairman and secretary general as their proposer and seconder.

27C. *The defamatory contents of the article aforesaid See Hua Daily News pleaded in Paragraph 27B above in Chinese as published and/or caused to be published at the press conference on 22.7.2010 by the Plaintiff jointly with and/or in the presence of and/or with the consent of Chong Jit Leong and/or Chang Hon Hiung was understood to refer to, impute, impugn and/or disparage the Defendants as office bearers in charge of the management of the Siburan Hall*, with a true and literal translation of the article in English read as follows:

THE MEMBERSHIP APPLICATION CONTROVERSY ORIGINATING FROM A ROAD INCIDENT

(Kuching 22/7) The issue of application to join Siburan Hall membership all started with a car accident in 2008

One of the 50 applicants, Chang Hon Hiung told the press during a press conference at the Siburan Hall.

He revealed that an accident caused the death of a student and that has caused a group of Siburan residents to submit petitions so that the management can open the membership to the residents.

'The residents do not intend to takeover the management but wish to improve the way the Hall has been managed.'

During that time, mediated by ADUN for Bengoh, YB Jerip Susil, Siburan Hall Committee agreed to hold a dialogue on 30 April 2008 so the group of residents may expressed their views the committee.

'After the dialogue, the committee agreed to accept the suggestion that they could recruit more members and as a result, the group of residents started to collect personal details and fill in the applications forms and submitted to the then secretary general, Jee Nyen Chong (who is now Chairman of the committee) together with the entrance fee'. (emphasis added)

[19] We have deliberated on the impugned articles as reproduced above and we conclude that the defendants did not throw the whole article or articles on the plaintiffs which had in turn caused great embarrassment in the *DDSA Pharmaceutical* sense. We find that the counterclaim is not too broadly stated as the defendants had in the beginning of the paragraph of their counterclaim qualified how such an article had defamed them. For example in para. 19C it begun with the following words:

> 19C. The defamatory contents of the article aforesaid International Times pleaded in Paragraph 19B above in Chinese as published and/or caused to be published at the press conference on 22.7.2010 by the Plaintiff jointly with and/or in the presence of and/or with consent of Chong Jit Leong and/or Chong Hon Hiung was understood to refer to, impute, impugn and/or disparage the Defendants as office bearers in charge of management or the affairs of the Siburan Hall, ...

[20] It is clear that the defendants had stated which part of the articles which had defamed them. Clear reference has been made to the articles which the defendants believe will implicate the wrong doings of the defendants which had maligned the defendants.

[21] Thus, we are unable to support the plaintiffs' view that the counterclaim had been drafted generally as in the *DDSA Pharmaceutical* sense given the reasons stated above. More importantly we cannot see how the plaintiffs were embarrassed in the light of their defence of justification and fair comment which they have pleaded in their defence to the defendants' counterclaim.

Thus, we are of the view that there is no basis for the plaintiffs to say that the pleading of the articles in their entirety without specifying the particular passage or sentence or part of the articles will render the pleading defective. As the plaintiffs were the persons who caused the publication of the articles by calling for a press conference to invite publication of their statements, they cannot pretend to say that they failed to understand what they had uttered or caused to be published that were defamatory of the defendants.

[22] In this case based on the facts and circumstances, to limit the defendants to highlight the relevant facts that give rise to the defamatory statement would distort the defendants' case that they seek to make. We are of the view that the articles were properly set out in the pleadings. The defendants did not throw the whole article or articles on the plaintiffs and in fact the defendants had chosen to plead in their counterclaim only nine out of the sixteen articles published in the Chinese Dailies.

[23] It has been an accepted practice in civil litigation involving defamation cases for parties to produce in whole articles which must be construed in the whole context. In this regard we refer to the Atkins Court Form Second Edition 25, 1990 Issue at paragraph which states:

> The statement of claim must set out the precise words complained of and should not allege that the defendant published words "to the following effect" where the words complained of appear in a long article or a book, the plaintiff should plead only those passages which are alleged to be defamatory; to "throw the whole article or book" at the defendant and at the court, has been said to be embarrassing; moreover, it may enable the defendant to widen the scope of a plea of justification However, since the word complained of must be construed in their context, the jury will be entitled to see the whole article or book, and the case may be.

[24] A similar position has been highlighted in *Gatley On Libel And Slander*, 11th edn. [2010] at pp. 967 para 28.12 as referred to us by the defendants' solicitors. For ease of reference the relevant excerpt from the said book is reproduced as follows:

> [28.12] Only relevant passages to be set out.
>
> The particular passages complained of should be clearly identified and set out. *The claimant cannot confine the material of which he complains to an extract from a single publication in the circumstances*

where it is obvious that no reasonable reader would have read that extract in isolation and any reader inquiring beyond that material could not possibly have drawn an inference defamatory of the claimant. Where the claimant intends to allege that the meaning of words is affected by the context in which they were written or spoken, he should include his contextual material in the particulars of claim. However, surrounding material which is genuinely irrelevant to the claimant's complaint should be omitted. This is particularly important where the claimant is suing in respect of words contained in a book or a long "feature" article in a newspaper. *Save in the exceptional circumstances where the sting of the matter can properly be said to derive from the publication read as a whole, it will not be appropriate to set out the article or book in its entirety.*

*Where the matter of which the claimant complains consist of related material published by the defendant on different occasions, and where there is apparent, on the face of the matter complained of itself, either an intention on the part of the defendant that it be read together or direct references internally one to the other so that the reader may reasonably be expected to read it together, it has been held to be an acceptable practice to plead all of the material in the one paragraph of the particulars of claim and to identify the imputations said to have been conveyed by the material as a whol*e. Where possible the claimant should give the page reference to the book or newspaper where the allegedly defamatory material is to be found. In cases in which the offending material is so long that it cannot conveniently be pleaded in the particulars of claim, the material should be pleaded in a schedule. (emphasis added)

[25] To conclude, courts must exercise their discretion sparingly in striking down pleadings for too much or too little stated especially in defamation cases. Each case clearly depends on its own facts and circumstances. Based on the facts and circumstances of this case we find that the pleadings are not bad in law for stating the impugned articles in their entirety.

[26] In the premises, having given this matter our utmost consideration we formed the view that for the reasons given in this judgment the decision of the learned High Court Judge should not be permitted to stand. Accordingly, we allowed the appeal by the defendants with costs of RM10,000 here and below and reinstated the counterclaim.